

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.1987/H084

BETWEEN	KENNESHA HARRIS (an infant by her Mother and next friend BEVERLY HARRIS)	PLAINTIFF
AND	ELAINE HALL	FIRST DEFENDANT
AND	RUPERT McINTOSH (Trading as McIntosh Repairs	SECOND DEFENDANT
AND	ANTHONY MORGAN	THIRD DEFENDANT

Gordon Robinson and Jeffery Mordecai for the Plaintiff instructed by David Henry of Nunes, Scholefield, DeLeon and Company.

Alexander Williams for First Defendant instructed by Myers, Fletcher and Gordon.

Donald Scharschmidt Q.C. and Sonia Jones for the Second Defendant instructed by Gresford Jones.

Third Defendant was absent and unrepresented.

Heard - June 15, 16, 18, 19, 25 and 26, and October 22, 1992.

RECKORD, J.

The plaintiff is a school girl now 14 years old. On the 1st of October, 1985, when she was just 7 years old she was hit down by a motor car as she stood on the sidewalk at the corner of Highholborn Street and Laws Street in down town Kingston at about 7:30 a.m. She was on her way to school and was accompanied by her brother Ricardo then 8 years old. She recalls seeing her brother run and remembers nothing else until she regained consciousness in the Bustamante Hospital for Children. Her left foot was seriously injured and she was crying "I was crying because foot looked bad and it was painng me." She also had a cut on the left side of her forehead which was hurting her. She remained in the hospital for over two months. She received treatment in the hospital including a skin graft. After discharge she had to return to hospital for further treatment.

When she returned to school the leg hurt when she walked too far. To her the leg was looking awful - it had scars on it. Her schoolmates said unpleasant things about her leg and she felt bad about it. She took the common entrance examination twice but never got through. She wanted to go to Merle Grove High School or Alpha but got neither. She was given a place at Trench Town Compre-

hensive. Since the accident her head hurts whenever she is concentrating and studying for examinations. Although she does not have a boy friend now "I think with a leg like this no boy will look at me."

Her brother Ricardo Harris testified on her behalf. As they walked easterly on the left hand side walk of Laws Street a car licence No. FR 8409 travelling northerly along Highholborn Street came across the street and hit the plaintiff against the wall of a garage. She was placed in a car and taken off to the hospital and admitted. When he visited her there her left leg was in cast. When she came home the leg looked horrible.

Elaine Barrett supported the evidence of Ricardo Harris. She had been living at No. 4 Laws Street for the past 30 years. On the 1st of October, 1955, she was standing outside No. 46 Highholborn Street. This is beside No. 44 which is a garage which was operated by Mr. McIntosh, the second defendant. She knew that he operated two garages, one at Gold Street and the other at Highholborn Street. She saw the car mount the sidewalk and hit the plaintiff on to the wall of the garage. She saw that it was a man who drove the car but did not know him. She knew Mr. Gamble who operated this garage before Mr. McIntosh took it over. The driveway into the garage is on Highholborn Street.

Beverly Harris, the plaintiff's mother next gave evidence. The pair of shoes plaintiff was wearing was destroyed in the accident. It was valued \$200.00. She paid registration fee to the hospital also fee for medical report - \$105.00. She visited the plaintiff twice per day every day for one month travelling by bus and taxi five or six times by taxi, remainder by bus. Bus fare \$10.00 per day and taxi \$25.00. After the plaintiff was released from hospital she took her back for follow up treatment. Plaintiff was in hospital for 10 weeks and was at home for 3 months before she returned to school. It cost her \$300.00 to provide snacks for the plaintiff in the hospital. She paid \$40.00 per week for a lady to look after the other children at home while the plaintiff was in hospital.

Before the accident the plaintiff was doing very good at school. Since she returned to school after the accident she has fallen back in her lessons. She complains of headaches most of the time while studying. She has observed from the way the plaintiff dresses that the scars on her leg have been affecting her. She always wants to wear long pants and thighs to hide the scars.

Dr. William Dennis practices as a general pediatric surgeon at the Children's Hospital. He saw the plaintiff on the 1st of October, 1985. On examination he found some degree of distress because of the wounds she had sustained. She was conscious but lethargic. She had bruises over her right thigh and lacerations over the right hip and left eye. There was a serious and degloving injury i.e. the outer layer of the skin and subcutaneous tissue had been stripped from the limb. This extended from just below the knee to the middle of the top of the foot and involved the muscles, portions of which were removed with the skin.

She was resuscitated with intravenous fluids and taken to operating theatre where the wounds were cleaned. The degloving injury needed defatting. This was done. She received supportive physiotherapy and antibiotics after the operation. By the 9th post operative day the leg wounds were infected and began breaking down. By November 6, the wounds were clean enough to accept skin graft from the thigh of the same limb. She developed a flexion contracture, i.e. the limb tended to be fixed making straightening of the limb difficult. This responded well to physiotherapy. She was discharged on December 6, but followed up in out-patient department for next 3 months and discharged March 13, 1986. The leg had some gruesome scarring and the doctor suggested that plastic surgery should be sought.

Dr. Dennis next saw the plaintiff on the 28th of May, 1987. At that time the scars had become more gruesome. They were hypertrophied and had a green lizard appearance and he again suggested plastic surgery. There was no impairment of functions but there was a cosmetic disability which he thought would be emotionally quite taxing for her - her personal body image had been smeared. (Two medical reports prepared by this doctor were admitted in evidence.)

Corporal Richard Mitchell testified that he took statements from Rupert McIntosh and Anthony Morgan, the second and third defendants concerning an accident at the corner of Highholborn and Laws Street on the 1st of October, 1985. These statements were admitted in evidence as exhibits one and five. In his statement McIntosh admitted he operated a body shop at 16 Gold Street, Kingston and a duco shop at 44 Highholborn Street. He said that the third defendant Morgan was not given permission to drive the car and that Morgan "wasn't directly employed by me, he was always given work by one of my job worker."

In his statement Morgan said he was employed to McIntosh Auto Repairs, 16 Gold Street, Kingston. He admitted driving the car from the body shop to the duco shop when it got out of control and crashed injuring the little girl.

Dr. Tony Jackson, a plastic and reconstruction surgeon, first saw the plaintiff on the 3rd of December, 1991. He saw a residual scar from the donor area on the left thigh and scar extended to the ankle. The scarring was grotesque. To improve the appearance he proposed a scar revision called tissue expansion. This would entail importing a tissue expander from the United States of America of the value of about US\$800.00. He explained the procedure which would involve two operations.

Anaesthetic costs would be	- \$ 10,000.00
Hospitalization i/c room and fees	- \$ 17,000.00
Surgeons Assistants and Nursing fees	- \$ 20,000.00
Medical Report	- \$ 4,000.00

His report dated 18th February, 1992, was admitted in evidence.

This was the end of the plaintiff's case.

The first defendant Elaine Hall testified on her own behalf. She admitted being the owner of motor car FR 8409 in September 1985 which she gave to the second defendant for body repairs and for ducoing at his shop at Gold Street. She left the keys with the second defendant. She never gave him permission to drive car on road but expected it to be moved around in the yard. She identified the policy of insurance for her car which was in force at the time of the accident.

She was cross-examined. She did not know who physically would be doing the work but did not expect it would be Mr. McIntosh himself. When she gave him the keys she never gave him any instructions. She never told him where the work was to be done.

This was the case for the first defendant.

Mr. Rupert McIntosh, the second defendant described himself as an Auto body repairer and in October 1985, operated a business known as McIntosh Auto Repairs at 16 Gold Street, Kingston. Before going to Gold Street he operated at 44 Highholborn Street. He admitted that in mid September, 1985, that the first defendant delivered her car to him for him to do necessary body works and duco. He did body work at Gold Street but the ducoing would be done at Highholborn Street.

"If the vehicle can be driven we drive it up to the duco shop. If it can't, we push it to the duco shop or tow it." One Tasman Francis was his body man at the time and he was paid on a job basis. He knew the third defendant Anthony Morgan. He has never worked with him (McIntosh) but knew he did work for Francis. He has never paid Morgan for any work he did. Francis paid him. One Roy McFarlane did his duco work at Highholborn Street.

He became aware that the car was involved in an accident and gave a statement to the Police which he identified in court. Only himself, Francis or McFarlane, the three licensed drivers, were permitted to drive customers cars from the body shop to the duco shop. He never gave permission for the third defendant to drive the car. Francis, who had worked with him for the past 15 years, was the particular job worker for the first defendant's car.

Under cross-examination Mr. McIntosh said "Roy McFarlane not now working with me. He still does work for me on job basis. 1st October, 1985 he was employed to me. He was always working on job basis. Neither Francis nor McFarlane were employed to me. They were on job basis." On the 1st October, 1985 all his duco work went to McFarlane after body work is finished. Morgan, although not permitted to drive, "would be allowed to push the car if it can't be driven. Tasman would call whoever is there including Morgan to help pushing." When Miss Hall left the car with him she never told him of any restrictions on the driving. She never warned him that the car would not be covered by insurance if any one else drove it. He put the car keys in a pan in a locker inside the garage. If Tasman wanted to drive car he would just go to the locker and take keys. The locker is on the verandah and is not locked. The body work on the car was completed and it was on its way to the duco shop.

This ended the case for the second defendant. The third defendant, having failed to enter appearance and file defence, an interlocutory judgment was entered against him on the 13th June, 1988 with damages to be assessed.

Submissions

Mr. Scharschmidt on behalf of the second defendant submitted the plaintiff's case was that the third defendant was servant and or agent of the second defendant. As servant this involved a relationship of master and servant or employer and employee. By virtue of his pleading it was incumbent on the

plaintiff to prove that the third defendant was employed by the second defendant. If he crosses this hurdle he has to further establish that the third defendant was acting within the scope of his employment. He must establish that he was doing something which he was authorised to do or that he was doing something that was incidental with that which he was authorised to do. He conceded that an employer would be liable if a servant did negligently that which he was authorised to do or that which was incidental to which he was authorised to do. He submitted that the plaintiff had gone no where near to establishing that the third defendant was employed by the second defendant. He referred to the case of Beard v. London Omnibus Company Q.B. Reports (1900) 2 QB p. 580 where the Court of appeal held "that the plaintiff had not discharged himself from the burden cast upon him of showing that the injury was due to the negligence of a servant of the defendant acting within the scope of his employment, and that the defendants were entitled to judgment."

Counsel for the second defendant questioned whether the third defendant was doing something he was employed to do and referred the court to the case of Hilton v. Thomas Burton (Rhodes) Limited and Another (1961) 1 AER 74 where the court held that the test whether the employer was liable for the negligence of his servant was whether the servant was doing at the time something that he was employed to do. See also the case of Harrison v. Michelin tyre Co. Ltd. (1985) 1 AER 918 where it was held that for the purpose of determining vicarious liability, the test whether an employee was acting in the course of his employment was whether a reasonable man would say either that the employee's act was part and parcel of his employment (in the sense of being incidental to it) even though it was unauthorised or prohibited by the employer, in which case the employer was liable, or that it was so divergent from his employment as to be plainly alien to his employment, and wholly distinguishable from it, in which case the employer was not liable.

Other cases referred were Hewitt v. Boyvin and Another (1940) 1KB 188 and Ormrod and Another v. Crosville Motor Services Limited and Another (1955) 2 AER 753.

The court was referred to the definition of "Servant in the 11th Edition Salmon on Tort at page 97.

Mr. Scharschmidt said the judgment of Lord Banning in the Orarod case supported the following proposition. To be an agent for the purpose of driving one needs the owners consent and further, at the material time, the driving must have been done on behalf of the owner or bailee.

On the question of bailment Mr. Scharschmidt referred to the local case of Bowen v. Phillips of JLR at p. 94 and to the Canadian Bar Review, Volume XXVII at page 585 and said he supported the three propositions at page 586.

Reference was also made to the decision of the Privy Council in the case of Canadian Pacific Railway Co. v. Lockhart - (1942) 2 AER 464. In this case the servant of a company in the course of his employment had used his own car, which was uninsured, on the company's business. He had been prohibited from doing so unless his car was insured. On his way he injured an infant. Held, the servant was performing the journey for the purpose of his employment because the driving of an uninsured car was an authorised act although performed in an improper mode. The company was therefore, liable in damages.

The case of London County Council v. Cattermole (Garages) Ltd. (1953) 2 AER 582, was also referred to. Mr. Scharschmidt sought to distinguish the present case from the one under reference in that the third defendant was not a servant of the second defendant. The terms of his employment were not in evidence and the court was not in a position to infer it.

With reference to the statement given to the police exhibits 1 and 5, Mr. Scharschmidt submitted that they complimented each other and were not in fact in conflict. Nothing in Morgan's statement can be received by the court as an admission against the second defendant. A agent can only make admissions against his principals if such admissions are within the scope of his employment. See Cross on Evidence - 5th Edition at page 524. Also Burr v. Ware RDC (1939) 2 AER-688.

If the court finds the two documents to be in conflict, it was submitted that the plaintiff had left the court with two conflicting versions and as a result the plaintiff had failed to discharge the burden of proof and the court could not in law choose the version which was in favour of the plaintiff's case. See Capital Trust Co. v. Fowler, 64 Dominion Law Reports 209.

On behalf of the first defendant Mr. Williams made his submissions in writing. In summary, from the evidence the second defendant was an independent contractor and was neither a servant or employee of the first defendant.

The first defendant gave no permission to the second or third defendants to drive her car on the road therefore she was not in breach of any statutory duty.

On behalf of the plaintiff, viva voce submissions on the question of damages and written submissions on the other aspects of the case were made by Mr. Robinson. He dealt first with Special damages.

Additional help for 9½ weeks @ \$40.00 per week	= \$	380.00
Transportation: 14 trips per week - 5 by taxi and 9 by bus -		
\$300 per week - 9½ weeks @ \$300.00 per week	= \$	2,850.00
On date of discharge - trip	= \$	30.00
Out patients visit twice per week for 14 weeks	= \$	545.00
Damaged or lost property	= \$	200.00
medical expenses	= \$	105.00
Additional Food	= \$	300.00
		<u>\$ 4,410.00</u>

Re General Damages

Reference was made to Mrs. Khan's Book on Personal Injuries Awards Volume 2 at page 165 - Ellis v. Industrial Chemical Co. where the Court of Appeal assessed damages for pain and suffering @ \$150,000.00. This would be equivalent to \$780,000.00 now. For gender difference and age this should be converted to One Million Dollars. The injuries in the present case is not as serious as case under reference and an award of \$500,000.00 would be appropriate.

Other cases mentioned were Khan's Volume 2 p. 169 - Kawalsingh v. DaCosta Brothers - \$60,000.00 awarded in 1985. This injury not as serious as the instant case.

Khan's Volume 3 p. 170 Berry v. Fearon - \$90,000 awarded in May 1989. The instant case is more serious.

Khan's Volume 3 p. 172 - Forbes v. Alcan \$200,000.00 awarded in July 1988
Instant case not as serious.

Under the heading of Handicap on the labour market Mr. Robinson submitted that the plaintiff's career will be limited by the scarring. She can't become a model. Her performance at school dropped after the accident.

He referred to Khan's Volume 3 page 225 Suit C.L. C437/84 - Carter v. Jamaica Inn Limited where \$120,000.00 was awarded for loss of earning capacity and suggested an award of \$150,000.00 in this case.

In reply to the submissions made on behalf of the plaintiff Mr. Scharschmidt said that the court is obliged to determine matter on the evidence and not on hearsay. The court should reject hearsay evidence even when it goes in without any objection being taken. There was no evidence that the third defendant Morgan was employed to do any driving at all and there was no similarity between any of the cases cited by the plaintiff with the instant case. On the question of general damages he considered that the figures quoted by Mr. Robinson were high.

Mr. Williams asked that the court adopt a common sense approach and in determining on what representative capacity was Morgan driving was he driving as agent of first defendant or agent of second defendant.

Conclusions

Case against First Defendant

The claim against the first defendant was on alternate grounds. Vicarious liability and Breach of Statutory duty under Section 4 of the Motor Vehicle Insurance (Third Party Risk) Act.

Vicarious Liability

In order to succeed on this part of the claim it must be proved by the plaintiff that the third defendant was either the servant or a agent of the first defendant. On page 6 paragraph 1 of his written submissions Mr. Robinson for the plaintiff readily concedes "that the third defendant cannot, in any respects, be the servant of the first defendant."

Was the third defendant agent of the first? She gave no permission to either the second or third defendant to drive her car on the road. She had left the keys with the second defendant only to facilitate him moving the car in the garage premises. The job to be done on the car never entailed it going on the road. The evidence does not disclose that the plaintiff knew that the duco work had to be done elsewhere. As far as she was concerned all the work was to be completed at the Gold Street shop. No road testing was necessary. From the evidence the third defendant was not present when the first defendant handed over the keys to the second defendant.

Any knowledge by the third defendant of what work was to be done on the car must have come from either the second defendant or his servant, not from the first defendant. She did not know him. From the first defendant left the car at the garage the second defendant was in possession of the car as bailee and the first defendant had no right to control the bailee or his servant or agents. See the Chowdhary case referred to in the written submission's of the first defendant. When, therefore, the third defendant drove the car to the duco shop I find that he was doing so for the sole purpose and benefit of the second defendant completing his contractual duty. Based on this conclusion, I find that the third defendant was not acting as the first defendant's agent at the material time.

Breach of Statutory Duty

Section 4(1) of the Motor Vehicles Insurance (Third - Party (Risks)

Acts reads:-

Subject to the provisions of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use a motor vehicle on a road, unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act.

The plaintiff's claim against the first defendant under this section is in three parts -

- (a) Giving her said motor vehicle to the second defendant, qua repairer with her permission to drive the said vehicle without there being in force in relation to such user a policy of insurance in compliance with the aforementioned Act.
- (b) Failing to insure the said vehicle to cover the driving of the said vehicle by the servants and or agents of the second defendant.
- (c) Failure to prohibit the driving of the said vehicle by the servant and or agents of the second defendant.

The policy of insurance that was in force at the time of the accident was in relation to the following uses (a) social, (b) domestic (c) pleasure purposes of the policy holder in person and in connection with her business.

(See Exhibit No. 2) This clearly does not cover use by the second defendant or any other person except the first defendant who was the policy holder.

When the first defendant contracted with the second defendant to repair her car, from the evidence nothing was said to her which would cause her to contemplate that her car would have to be driven on the road to complete the job. When she handed over the keys to him all she did was to give him possession of the car. She certainly gave him no permission to drive it wherever he wished. The second defendant knowing that the work had to be completed elsewhere should have sought permission from the first defendant. She would have the option then of taking the car to other repairs or insist that she be contacted when the driving was necessary so that she could do same herself. This was not a case of that car being test driven to insure that the job was satisfactorily done.

The plaintiff has therefore failed to prove to my satisfaction that the first defendant either caused or permitted the second or third defendants to use her motor vehicle on the road.

With reference to paragraph C, I agree with counsel for the first defendant in paragraph 25 of his written submissions that section 4 of the Act does not contemplate such a duty.

The claims for a breach of Statutory Duty against the first defendant therefore fail.

Case against Second Defendant

Both in the pleadings and in his evidence the second defendant admits that he operated McIntosh Auto Repairs at 16 Gold Street, Kingston, and that the first defendant motor car was left in his care and control. Having admitted this there is no question that he was bailee for the first defendant. It is noted that the second defendant in his defence denies that he operated premises 44 Highholborn Street.

Was the second defendant a servant or agent of the first defendant as alleged in paragraph 3 of the Statement of Claim?

"A servant may be defined as any person employed by another to do work for him on the terms that he, the servant, is to be subject to the control and direction of his employer in respect of the manner in which his work is to be done."

(See Salmon on Tort, 11th Edition p. 97).

To be an agent, there must be consent of the owner or bailee to drive the car and the driving must have been done on behalf of the owner or bailee.

Does the second defendant fall in either of these categories?

I think not. It is clear, however, from the evidence that he is an independent contractor. On what basis then is liability being sought against the second defendant. The plaintiff claims that the third defendant is the servant and agent of the second defendant and as such, he the master, would be vicariously liable for the acts of his servant and agent.

"It is clear that the master is responsible for acts actually authorised by him: for liability would exist in this case, even if the relation between the parties was merely one of agency, and not one of service at all. But a master, as opposed to the employer of an independent contractor, is liable even for acts which he had not authorised, provided they are so connected with acts that he has authorised that they may rightly be regarded as modes- although improper modes - of doing them. In other words, a master is responsible not merely for what he authorises his servant to do, but also for the way in which he does it." See Canadian Pacific Railway Co. v. Lockhart (Supra) at page 467.

In support of her case the plaintiff called Corporal Mitchell who testified that he took a statement from the third defendant days after the accident in which he stated that he was employed to McIntosh Auto Repairs which the second defendant admits he owns. In his defence, the second defendant denies that the third defendant was employed to him, but admits he did some work at the garage assisting an employee, Mr. Tasman Francis, who was the particular job worker for the first defendant's car. He would check on Francis' work from time to time to ensure he did it properly. The second defendant admits that the car was under his control. It is reasonable therefore to infer that persons doing work on the car would also be under his control and within his employment which would confirm what the third defendant told Corporal Mitchell.

I have no difficulty in determining therefore that the third defendant was the servant of the second defendant. Was the servant within the scope of his authority?

On the evidence of the second defendant himself, the third defendant would push cars from the body shop to the Duco Shop when called upon.

He also testified that at the time of the accident the car had been driven from the body shop to go to the duco shop to be dacoed. Was the driving of the first defendant's car to the duco shop "so divergent from the employment as to be plainly alien to, and wholly distinguishable from the employment?"

(See Harrison v. Michelin Tyre Co. Ltd. (Supra)).

Counsel for the plaintiff relied heavily on the case of London County Council v. Cattermole (Garages) Ltd. (Supra): In this case the defendant, who were owners of a garage, employed one Preston as a garage hand, part of his duty being to move cars in the garage so as to make way for other cars. He had no driving licence and he was forbidden to drive vehicles. In front of the garage were petrol pumps and the attendant asked Preston to remove a van which was stationary in front of the pumps, so as to allow some motor lorries to obtain petrol. Instead of pushing the van out of the way, Preston drove it. Finding that there was not sufficient space to drive straight into the garage out of the way of the lorries, he drove on to the highway, intending to turn there so as to come back to the garage behind the lorries. On the highway a collision occurred between the van which Preston was driving and a van belonging to the plaintiff, which was damaged. In an action by the plaintiff for damages against the defendants,

Held: Preston's duty being to move cars in the garage, it was impossible to define the scope of his employment as that of pushing cars by hand in contra-distinction to moving them by other means, including that of driving them, and, notwithstanding the fact that he was expressly forbidden to drive cars, his action in moving the van by means of its own engine, instead of by pushing it, was within the scope of his employment, being a wrongful and unauthorised way of performing an act which he was employed to perform; the excursion on to the highway was merely incidental to moving the van out of the way of other motor vehicles on the defendants' premises, the work for which Preston was employed, and, therefore, although it was illegal for Preston to drive on the highway as he had no licence, the fact that the accident occurred when he took the van off the garage premises on to the highway did not affect the result, and the defendants were liable in damages to the plaintiffs for Preston's negligence."

The instant case seems to be on all fours with the Cattermoles case referred to above. Not being the holder of a driver's licence, the third defendant had no lawful authority to drive the car on the road. However, he had authority to push the car on the road. I find that his action of moving the car by means of its own engine instead of by pushing it, was within the scope of his employment, although a wrongful and unauthorised way of performing an act which he was authorised to perform.

Was the third defendant an agent of the second defendant?

He had authority to push the car to the duco shop. The accident took place as he drove the car on the way to the duco shop. It was a part of the second defendant's business to duco the car. The inescapable conclusion is that the car was being moved from one of the second defendant's place of business to another of his place of business and in connection with his business. I find that the third defendant was his agent and certainly not "on a frolic of his own" as pleaded by the second defendant.

In considering the second defendant's case I could not help but note from the very outset of his evidence that there were conflicts. In his defence filed he denied operating a business at 44 Highholborn Street. Yet in a statement tendered in evidence by consent he stated to Corporal Mitchell that he did operate such a business and again confirmed this under cross-examination. Again, in his pleadings, he denies that the third defendant was engaged in any business venture or mission on his part, yet admitted in cross-examination that the car was on its way to the duco shop to be ducoed. He denied that Tasman Francis was employed to him as a servant, but admitted Francis worked with him for over 15 years and resigned in 1989. His demeanour in the witness box was such as to make his evidence unreliable. He was discredited to the extent that one could not avoid the conclusion as suggested by counsel for the plaintiff, that he would do anything to escape responsibility for his servant's actions.

In summary, the plaintiff having failed to prove her case against the first defendant, there shall be judgment for the first defendant against the plaintiff with costs to be agreed or taxed.

There shall be judgment for the plaintiff against the second defendant with damages to be assessed.

Assessment of Damages

Special Damages

The evidence tendered by the plaintiff supports the following which I find to be reasonable.

The amount of \$300.00 per week was spent for travelling for 9½ weeks.-

	\$ 2,850.00
On discharge	- \$ 30.00
Out patient visits for 14 weeks	- \$ <u>545.00</u>
Total for transportation	= \$ 3,425.00
Damage / lost property	- \$ 200.00
Medical expenses	= \$ 105.00
Additional food	- \$ 300.00
Additional help for 9½ weeks	- \$ <u>380.00</u>
@ \$40.00 per week	\$ 4,410.00

General Damages

I have given careful consideration to the several cases referred to by Counsel for the plaintiff on this question. (The other attorneys made no submissions in this regard). It is not in dispute that the plaintiff suffered serious injury to her left lower limb which has left scars that will remain with her for the rest of her life.

The plaintiff is a female in her early teens. Some of the quoted cases are far more serious than the instant case and others are less serious. Under the heading of Pain and Suffering and Loss of Amenities I am of the view that an award of \$400,000.00 would be an adequate compensation for this injury.

The plaintiff has not yet joined the labour force. She is just 14 years old. In another three to five years she will begin her career. Her badly scarred leg will affect her choice of career. Her attorney points out that she can't become a model. Her performance at school had also fallen since the accident. He asked for an award of \$150,000.00 under the heading of Handicap on the labour market. In comparison with awards made in other cases this claim seem far too high. I regard the sum of \$50,000.00 as a reasonable award under this head.

The evidence of both doctors called by the plaintiff suggest that in order to improve the appearance of her leg and make it more acceptable that plastic surgery is desirable. From the evidence of Dr. Jackson the costs of this operation seem high but may not be unreasonable bearing in mind the specialised nature.

The damages assessed against both the second and the third defendants are as follows:-

Special Damages. \$4,410.00 with interest @ 3% from the 1st of October, 1935 to the date of judgment.

General Damages: For Pain and Suffering and loss of amenities \$400,000.00 with interest @ 3% from date of service of writ to date of judgment.

For Handicap on the labour market - \$50,000.00.

For Future medical treatment J\$47,000.00 plus US\$800.00.

Costs to the plaintiff against the second and third defendants to be agreed or taxed.